

1 M. REED HOPPER, No. 131291
E-mail: mrh@pacificlegal.org
2 DAMIEN M. SCHIFF, No. 235101
E-mail: dms@pacificlegal.org
3 Pacific Legal Foundation
930 G Street
4 Sacramento, California 95814
Telephone: (916) 419-7111
5 Facsimile: (916) 419-7747

6 Attorneys for Plaintiffs
7
8

9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA
11

PACIFIC LEGAL FOUNDATION
930 G Street
Sacramento, CA 95814
(916) 419-7111 FAX (916) 419-7747

12 AMY GRANAT, CORKY LAZZARINO, SIERRA)
ACCESS COALITION; CALIFORNIA OFF-)
13 ROAD VEHICLE ASSOCIATION; THE)
COUNTY OF PLUMAS; AND THE COUNTY OF)
14 BUTTE,)

15 Plaintiffs,)

16 v.)

17 UNITED STATES DEPARTMENT OF)
AGRICULTURE, a federal agency; TOM)
18 VILSACK, in his official capacity as Secretary of)
the UNITED STATES DEPARTMENT OF)
19 AGRICULTURE; UNITED STATES FOREST)
SERVICE, a federal agency; THOMAS L.)
20 TIDWELL, in his official capacity as Chief of the)
UNITED STATES FOREST SERVICE; RANDY)
21 MOORE, in his official capacity as PACIFIC)
SOUTHWEST REGIONAL FORESTER; ALICE)
22 CARLTON, in her official capacity as the former)
PLUMAS NATIONAL FOREST SUPERVISOR;)
23 AND EARL FORD, in his official capacity as)
PLUMAS NATIONAL FOREST SUPERVISOR,)

24 Defendants.)
25
26
27
28

No. 2:15-cv-00605-MCE-EFB (TEMP)

**PLAINTIFFS' RESPONSE
AND REPLY TO FEDERAL
DEFENDANTS' CROSS-MOTION
FOR SUMMARY JUDGMENT AND
RESPONSE TO MOTION FOR
SUMMARY JUDGMENT**

Date: July 28, 2016
Time: 2:00 p.m.
Courtroom: 7, 14th Floor
Judge: Hon. Morrison C. England, Jr.

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1 ARGUMENT

2 I

3 THE SERVICE USED AN ARBITRARY AND IMPROPERLY
4 TRUNCATED ANALYSIS TO CLOSE HUNDREDS OF
5 MILES OF ROUTES TO MOTORIZED VEHICLE TRAVEL

6 **A. The Service Illegally Failed To Verify the Data Underlying Its
7 Route Closures, an Error Compounded by the Agency’s Reliance
8 on Irrelevant Factors, as Well as a Myopic Focus on Other Factors**

9 In deciding which Plumas National Forest routes to designate, and in assessing the ensuing
10 environmental impacts, Defendants United States Department of Agriculture, *et al.* (Service), were
11 required to adhere to the “rule of reason” mandated by the National Environmental Policy Act, 42
12 U.S.C. §§ 4321-4370h. *See, e.g., Dep’t of Transp. v. Public Citizen*, 541 U.S. 752, 767 (2004).

13 According to this rule, an agency’s analysis must contain a thorough discussion of a project’s
14 significant environmental impacts, *Conservation Cong. v. Finley*, 774 F.3d 611, 621 (9th Cir.
15 2014), done objectively and in good faith, not merely as a rote paper exercise. *Western*
16 *Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 491 (9th Cir. 2010). Broad and speculative
17 statements about a project’s effects are inadequate unless a more accurate assessment cannot be
18 done. *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1213 (9th Cir. 1998).

19 The Service contends that Plaintiffs Amy Granat, *et al.* (Forest Users), unreasonably
20 demand that every inch of all 1,107 miles of the Plumas National Forest’s non-system routes be
21 analyzed for inclusion in the National Forest Transportation System. *See Fed. Mem. & Opp’n at*
22 *9*. That is not the basis for the Forest Users’ complaint. Rather, it is that the Service cannot
23 plausibly fulfill its obligation to “carefully weigh environmental considerations and consider
24 potential alternatives,” *Barnes v. U.S. Dep’t of Transp.*, 655 F.3d 1124, 1131 (9th Cir. 2011), by
25 failing to verify on the ground its resource and access analyses for *any* of the some 700 miles of
26 non-system routes that the project shut down, including many routes specifically requested by the
27 Forest Users and others. Such a remarkable failure to confirm the facts suggests that the agency’s
28 decision-making was improperly based “on factors which Congress has not intended it to
consider,” thus leading to a decision that “entirely failed to consider an important aspect of the
problem.” *Lands Council v. McNair*, 537 F.3d 981, 993 (9th Cir. 2008) (en banc) (quoting *Motor*

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1 | *Vehicle Mfrs. Ass'n, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). *See Lands*
 2 | *Council*, 537 F.3d at 994 (“The Forest Service must explain . . . the reasons it considers the
 3 | underlying evidence to be reliable.”).

4 | The Service’s failure to validate its data for the majority of the routes affected by its project
 5 | cannot be reconciled with NEPA’s “rule of reason.” By limiting its fact-checking efforts to the
 6 | narrow subset of routes that had survived the paper analysis, *see* PLU-B-000081 (FEIS) (“A total
 7 | of 410 miles were surveyed for possible trail additions.”), the Service deprived itself of the ability
 8 | to verify its “first cut” methodology.¹ *See Columbia Falls Aluminum Co. v. EPA*, 139 F.3d 914,
 9 | 923 (D.C. Cir. 1998) (an agency’s use of a model is arbitrary if the model bears no rational
 10 | relationship to the on-the-ground facts). *Cf. Lands Council*, 537 F.3d at 992 (onsite analysis not
 11 | required only when a reasonable scientific basis supports a model’s accuracy). Indeed, that the
 12 | Service felt compelled to verify the facts on the ground with respect to its preferred 410-mile
 13 | subset shows that even the agency acknowledged its paper review to be susceptible to error, a fact
 14 | confirmed by the Service’s own mapping. *See* PLU-F-000005 (Service map purporting to show
 15 | pre-existing off-road vehicle restrictions for areas not eligible for route designation, with the
 16 | restricted areas (reflected by different colors) not aligning with their purported black-colored
 17 | borders). *See also* PLU-A-000161-162 (Sierra Access Coalition (SAC)/California Off-Road
 18 | Vehicle Association (CORVA) Appeal) (showing, based on more accurate mapping, that a
 19 | summarily dismissed route did not in fact cross private property).

20 | Even if the Service had adequately verified its data under NEPA, the agency’s summary
 21 | dismissal of hundreds of miles of non-system routes still could not be squared with the Travel
 22 | Management Rule. In determining whether to add a route to the system, the Rule requires the
 23 | Service to consider the effects on natural and cultural resources, public safety, recreational
 24 | opportunities, access needs, inter-forest conflicts, and administration and maintenance. 36 C.F.R.

25 | _____
 26 | ¹ Contrary to the Service’s contention, Fed. Resp. to Statement of Undisp. Facts ¶ 15, the agency’s
 27 | field review of the 410-mile subset did *not* include all routes proposed by the public. In fact, the
 28 | public, including the Forest Users, proposed the addition of many routes that never received field
 review because they did not survive the agency’s paper-review gauntlet. *See, e.g.*, PLU-G-001242-
 1244 (routes 6831, 7207, 7225, 7442, 7959, 7960, 7961, 7962, 7104, 7105, 7106, 8187, 6813,
 6814, 1646, 5202, 5203).

1 § 212.55(a). Contrary to this directive, the Service dismissed dozens of routes with only cursory
 2 consideration simply because they were in private ownership or were purportedly undesirable
 3 “spurs,” or because they connected to a non-forest road or to a road of higher maintenance level.
 4 *See, e.g.*, PLU-G-001242 (routes 6658, 6736, 6744, 6793, 6831); *id.* at 1251 (route 8318); *id.* at
 5 1252 (route 6640); PLU-G-001261 (routes 6205, 8725, 5255, 6607); PLU-G-001277 (routes 5416,
 6 5691, 139); *id.* at 1280 (routes 5301, 7802, 7803); *id.* at 1281 (route 5719); *id.* at 1291 (route 109).²

7 This approach avoids key considerations. For example, that a route is a spur does not
 8 necessarily determine the recreational value of the route. *See* PLU-B-000058 (FEIS)
 9 (acknowledging that at least some spurs can provide valuable recreational opportunities).
 10 Likewise, that a route crosses private land is irrelevant if “public rights of access across private
 11 property” exist. PLU-A-000315 (Plumas County Appeal). *Cf.* PLU-D-014432 (landowner
 12 unsuccessfully requesting that a route terminating at his property be analyzed). Similarly, that a
 13 route connects with a higher maintenance-level road does not necessarily raise a safety issue. *See*
 14 PLU-A-000204 (SAC/CORVA Appeal). Even if it did, other factors—such as access needs for
 15 search and rescue and wildfire control, as well as for recreation—might outweigh road safety
 16 concerns. *See generally* PLU-B-000016 (ROD) (allowing mixed used on a Maintenance Level 3
 17 road). Thus, in dismissing from further analysis so many routes based on factors not contemplated
 18 by the Travel Management Rule, or based on a myopic focus on just one factor, the Service
 19 committed a “clear error of judgment.” *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 378 (1989).

20 **B. The Service Failed To Analyze a Reasonable Range of Alternatives**

21 An alternatives analysis must be broad enough to foster “informed decision-making.”
 22 *Westlands Water Dist. v. U.S. Dep’t of Interior*, 376 F.3d 853, 868 (9th Cir. 2004). To satisfy that
 23 requirement, an agency must “[r]igorously explore and objectively evaluate all reasonable
 24 alternatives.” 40 C.F.R. § 1502.14(a). Those alternatives must be “reasonably related to the
 25 purposes of the project.” *Laguna Greenbelt, Inc. v. U.S. Dep’t of Transp.*, 42 F.3d 517, 524 (9th
 26

27 ² In their briefing, the Forest Users cite what the Service calls the “draft” versions of the inventory
 28 spreadsheets, Fed. Resp. to Statement of Undisp. Facts ¶ 12, because the so-called “final” versions
 do not contain the summarily eliminated routes.

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1 Cir. 1994). If such a valid but unanalyzed alternative exists, the failure to have examined it renders
 2 the impact statement deficient. *Westlands Water Dist.*, 376 F.3d at 868.

3 The Service’s analysis considered in detail four alternatives.³ PLU-B-000062 (FEIS). Yet
 4 these four merely reflected different arrangements of the same 410-mile subset of routes to which
 5 the agency had myopically limited its examination.⁴ *See* PLU-B-000068 (noting that the same
 6 Table 1 contains all of the trails to be added by any of the alternatives). The Service has not
 7 articulated any permissible reason why it could not consider alternative combinations of the same
 8 or similar number of routes *outside of* the agency’s preferred 410-mile subset. Such alternatives
 9 would be feasible: the effects of their designation would presumably be no harder to ascertain than
 10 the combinations of routes within the preferred subset, nor would their implementation be any
 11 more remote or speculative. *Cf. Life of the Land v. Brinegar*, 485 F.2d 460, 472 (9th Cir. 1973)
 12 (“[T]here is no need for an [environmental impact statement] to consider an alternative whose
 13 effect cannot be reasonably ascertained, and whose implementation is deemed remote and
 14 speculative.”). They would be consistent with the project’s purpose and need to regulate motor
 15 vehicle travel, and to provide additional motor vehicle access for recreational and other access
 16 needs. *Cf.* PLU-B-000014 (ROD). And they might well avoid environmental impacts traceable
 17 to the agency’s four principal alternatives, given that the Service dismissed many routes for *non-*
 18 *environmental* reasons. *See, e.g.*, PLU-G-001242 (“dead end spur,” “off county road,” “off
 19 [maintenance] level 3”). Thus, combinations of routes within the approximately 700-mile
 20 excluded subset could plausibly provide the same or better recreational opportunities *without* the
 21 environmental consequences associated with the agency’s alternatives selected from its preferred
 22 410-mile subset.

23
 24 ³ A fifth, the “no action” alternative, also received substantial treatment, but only to serve as a
 25 baseline comparison for the other alternatives. *See* PLU-B-000043 (FEIS). As explained in the
 26 text, that the Service considered designating *all routes* does not absolve the agency of the
 responsibility to consider smaller combinations of routes drawn from its disfavored 700-mile
 subset.

27 ⁴ The Service gave cursory attention to some alternatives that would have resulted in a net
 28 increase in the total number of routes designated for motorized vehicle use. *See, e.g.*, PLU-B-
 000081 (FEIS) (Alternative 2.4.1 “Designate All Inventoried Routes as Motorized Trails,”
 Alternative 2.4.2 “Designate More Trails”).

1 The Service did not consider alternatives drawn from outside its preferred subset because
 2 it summarily excluded those routes before embarking on the alternatives analysis. But the agency
 3 may not reduce the range of alternatives by artificially narrowing the potential array. *See Nat'l*
 4 *Parks & Conservation Ass'n v. Bureau of Land Mgmt.*, 606 F.3d 1058, 1070 (9th Cir. 2009) (a
 5 project's objectives must not be defined so narrowly so as to reduce artificially the number of
 6 otherwise available alternatives). The Service's truncated analysis therefore incorrectly resulted
 7 in the exclusion of many reasonable, feasible alternatives.

8 **C. The Service Failed To Take a "Hard Look" at the Project's Impacts**

9 The Service failed to take a "hard look" at how the closure of hundreds of miles of routes
 10 to motorized vehicle access would affect, among other things, the public's ability to camp, cut
 11 firewood, retrieve game, and access emergency services. *Cf. Klamath Siskiyou Wildlands Ctr. v.*
 12 *Boody*, 468 F.3d 549, 560 (9th Cir. 2006) ("NEPA requires an agency to take a 'hard look' at
 13 potential environmental consequences before taking action . . ."). The Service contends that it
 14 did analyze these impacts, Fed. Mem. & Opp'n at 22, but that is only partially true. For example,
 15 the Service understood "dispersed recreation opportunities" to include "camping, hunting, fishing,
 16 hiking, horseback riding, etc.," PLU-B-000056 (FEIS), yet its analysis of the project's impacts on
 17 opportunities for "dispersed recreation" is inexplicably limited to "camp sites," *see* PLU-B-
 18 000097-98 (FEIS). Notwithstanding that these impacts disproportionately hurt mobility-impaired
 19 persons, *see* PLU-A-000151-153, 190-191 (SAC/CORVA Appeal), the Service preemptorily
 20 declares that its mass route closure affects "just how you access the campsites." Fed. Mem. &
 21 Opp'n at 22 (quoting PLU-B-001171 (DEIS)). The agency fails to grasp that, for a mobility-
 22 impaired individual, motorized access is often the *only* access. PLU-A-000152 (SAC/CORVA
 23 Appeal).

24 Similarly dismissive is the Service's treatment of firewood accessibility. The agency
 25 contends that the project does not modify the public's ability to cut firewood, because such
 26 activities are directly governed by a separate permitting process, and because "cross-country"
 27 firewood retrieval was already banned prior to the project's adoption. Fed. Mem. & Opp'n at 22.
 28 Although the project does not directly regulate firewood use, it obviously does so *indirectly* by

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1 substantially eliminating routes (especially spurs and those close to communities) that are
2 important for firewood retrieval.⁵ *See* PLU-A-000169 (SAC/CORVA Appeal). *Cf. N. Ak. Env'tl.*
3 *Ctr. v. Kempthorne*, 457 F.3d 969, 975 (9th Cir. 2006) (hard-look analysis requires consideration
4 of all foreseeable direct and indirect impacts). That cross-country firewood retrieval was already
5 precluded, PLU-B-000083 (FEIS), sidesteps the issue. After all, cross-country travel on the Forest
6 had been prohibited *generally* for some time prior to the Service's mass route closure, *see* PLU-C-
7 002302-2310, in preparation for the final route designation decision, PLU-C-002318. Yet even
8 the Service acknowledges that such pre-decisional closures did not absolve the agency of the duty
9 to comply with the Travel Management Rule and NEPA when making its final designation
10 decisions. By the same token, the Service cannot shirk its obligation to take a hard look at the
11 impacts on firewood retrieval caused by its mass route closures, including, for example, how the
12 risk of catastrophic wildfire is increased when dead firewood trees are left unharvested. *See* PLU-
13 A-000172-173 (SAC/CORVA Appeal) (noting the Service's general failure to analyze impacts on
14 fire suppression).

15 **II**

16 **THE SERVICE IRRATIONALLY DECLINED TO DESIGNATE**
17 **MAINTENANCE LEVEL 3 FOREST ROUTES FOR MIXED USE**

18 The Forest Users challenge the Service's decision to impose a virtual blanket ban on off-
19 highway vehicle access to Maintenance Level 3 roads. The Service candidly admits that it has no
20 evidence that mixed use on Maintenance Level 3 roads in the Plumas National Forest is unsafe.
21 *Cf. Fed. Mem. & Opp'n* at 14 (contending that the agency "did not need to produce . . . traffic and
22 accident data to justify" its decision to prohibit mixed used on Maintenance Level 3 roads). The
23 agency therefore suggests that allowing such mixed use on forest "highways" would be unsafe as

24 ///

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28 ⁵ The firewood permits are, however, specifically issued subject to the Service's travel management decision-making. *See* PLU-A-000171 (SAC/CORVA Appeal).

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1 a matter of state and federal law.⁶ That is incorrect.⁷

2 The Chappie-Z'berg Off-Highway Motor Vehicle Law of 1971, Cal. Veh. Code
 3 §§ 38000-38604, *excludes* from the definition of “highway” “fire trails, logging roads, service
 4 roads regardless of surface composition, or other roughly graded trails and roads upon which
 5 vehicular travel by the public is permitted.” *Id.* § 38001(a). Most if not all of the Plumas National
 6 Forest’s Maintenance Level 3 roads fall within this exclusion. *See* PLU-B-000610 (FEIS)
 7 (defining Maintenance Level 3 roads as “low speed, single lane with turnouts and native or
 8 aggregate surfacing”); PLU-A-000157 (SAC/CORVA Appeal) (“Virtually all [Maintenance Level]
 9 3 roads on the Plumas [National Forest] were built during past logging activities.”). *See also* PLU-
 10 C-001554 (Service mixed-use designation form acknowledging California’s “highway” exemption
 11 for off-road vehicles). Thus, according to state law, operation of off-highway vehicles on such
 12 roads would be legal. *Cf.* Cal. Veh. Code § 38325 (equipment requirements for off-highway
 13 vehicles govern when the vehicle is operated pursuant to the Off-Highway Vehicle Law). That
 14 conclusion should not surprise the Service, given that one of the Counties’ major objections to the
 15 Project was the agency’s failure to coordinate with the Counties’ efforts *to encourage* off-highway
 16 vehicle use on their public roads. *See, e.g.*, PLU-A-000322 (Butte County Appeal) (observing that
 17 “mixed use is lawful and should be allowed,” and that “[u]npaved county and [forest] roads have
 18 long provided an interconnected transportation system for non-highway legal vehicles”); PLU-E-
 19 000243 (Plumas County Comment) (“Unpaved forest roads are intertwined with similar county
 20 roads which do accommodate [off-highway vehicles]. . . . Road systems should be integrated to
 21 provide a seamless transportation network for our citizens.”).

22 No principle of agency deference can cure the Service’s errors. Although Maintenance
 23

24 ⁶ The Service’s current categorical approach is inconsistent with its prior representation to the
 25 public. *See* PLU-D-014102 (March, 2007, Service FAQ) (“The Plumas will be reviewing *all* level 3
 roads to determine where mixed use will be allowed.” (emphasis added)).

26 ⁷ The final environmental impact statement cites a Centers for Disease Control study highlighting
 27 the dangers of teen driving as a reason to support the ban on mixed use for Maintenance Level 3
 28 roads. PLU-B-000127. But the study was not based on accidents on forest roads, PLU-A-000154
 (SAC/CORVA Appeal), which generally are built for log haul and therefore feature “curve
 widening, . . . construction of more turnouts, and other engineering designs to accommodate safe
 vehicle use.” *Id.*

1 Level 3 routes qualify as “public roads” under federal highway law, *see* 23 C.F.R. § 460.2(a)
 2 (defining “[p]ublic road”), the Service does *not* generally prohibit mixed use on such roads.
 3 Rather, such use normally depends on state traffic law. *See* 36 C.F.R. § 212.5(a)(1) (“Traffic on
 4 roads is subject to State traffic laws where applicable . . .”). *See also* PLU-C-001544 (“[S]tate
 5 traffic laws generally apply on National Forest System roads.”). Hence, the Service’s mixed-use
 6 policy is a function of the agency’s interpretation of *state* law, not its own regulations. And there
 7 is no reason to defer to the Service’s interpretation of laws and regulations it neither created nor
 8 administers. *See Ass’n of Civilian Technicians, Silver Barons Chapter v. Fed. Labor Relations*
 9 *Auth.*, 200 F.3d 590, 592 (9th Cir. 2000) (“[C]ourts do not owe deference to an agency’s
 10 interpretation of a statute it is not charged with administering . . .”).

11 III

12 IN DECIDING TO CLOSE A SUBSTANTIAL 13 MAJORITY OF THE FOREST’S NON-SYSTEM 14 ROUTES, THE SERVICE IMPERMISSIBLY FAILED TO 15 COORDINATE AND TO EXPLAIN INCONSISTENCIES 16 WITH LOCAL GOVERNMENTS’ PLANNING EFFORTS

15 The Forest Users contend that the Service violated the Travel Management Rule and
 16 NEPA, among other mandates,⁸ by failing to coordinate with Butte and Plumas Counties. These
 17 failures in turn radiated beyond the Service’s inadequate interaction with local government to skew
 18 the Service’s NEPA work generally, including its effects and alternatives analysis. The agency
 19 defends its dearth of interaction with the Counties by citing the various public meetings it
 20 conducted leading up to its mass route closure. Fed. Mem. & Opp’n at 16-18. But coordination
 21 requires more than the general public notice and comment afforded all interested parties under the
 22 Travel Management Rule and NEPA. Otherwise, for example, the specific obligation to
 23 coordinate—which does not apply to the general public, 36 C.F.R. § 212.53—would be
 24 superfluous. *Cf. In re HP Inkjet Printer Litig.*, 716 F.3d 1173, 1184 (9th Cir. 2013) (text should
 25 be interpreted so as not to render it superfluous).

26 Because the Travel Management Rule does not define “coordination,” it is appropriate to

27 _____
 28 ⁸ *See, e.g.*, PLU-C-000250 (Forest Serv. Manual 7715.3(2)) (the Service must “[c]oordinate with appropriate . . . county . . . governmental entities . . . when making travel management decisions”).

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1 | look for guidance in how that term is used in other contexts that govern the Service’s land
 2 | management tasks. *Cf. Erlenbaugh v. United States*, 409 U.S. 239, 243 (1972) (“[A] legislative
 3 | body generally uses a particular word with a consistent meaning in a given context.”). Such a
 4 | context naturally includes the Service’s land and resource management planning under the
 5 | National Forest Management Act, 16 U.S.C. §§ 1600-1614. According to the version of the Act’s
 6 | implementing regulations applicable to the Service’s mass route closures, the agency was required
 7 | to “coordinate” its planning efforts with state and local governments. 36 C.F.R. § 219.7(a) (1983).
 8 | Such coordination would have entailed, among other things, an analysis of the planning and land-
 9 | use policies of affected counties which would consider the policies’ objectives, interrelated
 10 | impacts, and alternatives where conflicts were identified. *Id.* § 219.7(c)(1)-(4). The information
 11 | would have been displayed in the environmental impact statement. *Id.* The Service did none of
 12 | this.⁹ *See* PLU-A-000319-320 (Butte County Appeal). Its failure therefore “significantly
 13 | inhibit[ed] the public’s ability to understand the competing priorities of the Forest Service and
 14 | [non-federal governments].” *Cal. Res. Agency v. U.S. Dep’t of Agric.*, Nos. C 08-1185 MHP, C
 15 | 08-3884 MHP, 2009 WL 6006102, at *10-*11 (N.D. Cal. Sept. 29, 2009). In other words, the
 16 | agency’s refusal to coordinate its decision to close hundreds of miles of routes undercut local
 17 | governments’ ability to participate in the process.

18 | The Service’s indifference to local concerns also violated NEPA, because the agency failed
 19 | to set forth in the environmental impact statement the many inconsistencies between its decision
 20 | to close a substantial number of routes and the Counties’ local planning efforts. *Cf.* 40 C.F.R.
 21 | §§ 1506.2(d), 1502.16(c). The Forest Users repeatedly pointed out how the agency’s mass route
 22 | closure would frustrate the Counties’ planning efforts, including the encouragement of off-highway
 23 | vehicle use on county roads and the maintenance of a seamless transportation network between
 24 | Forest and County routes, as well as the preservation of adequate access for remote-dwelling
 25 | citizens, for search and rescue, and for fire suppression. *See* PLU-A-000321 (Butte County
 26 |

27 | _____
 28 | ⁹ That these coordination obligations may not apply directly to the Travel Management Rule
 process, PLU-A-000057 (Appeal Decision), does not make them any less relevant in construing
 the Rule’s undefined “coordination” requirement.

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1 Appeal) (“[T]he Forest’s Motorized Travel Management Plan will have a significant negative
 2 impact on the area’s transportation and circulation system.”); PLU-E-000015 (Plumas County
 3 Comment) (noting the Service’s failure to assess the impact of the route closures on private
 4 parcels’ access to evacuation routes, forest treatment and fire suppression efforts, and the
 5 connecting role that county roads play as part of the Forest road network).¹⁰ *See also* PLU-A-
 6 000151 (SAC/CORVA) (citing as a lack of coordination the fact that “many routes intersecting the
 7 Mt. Hough Road (a Plumas County Road) were eliminated from consideration even though this
 8 road is close to Quincy and receives heavy [off-highway vehicle] traffic”). The Service responds
 9 that what the Counties do on their roads is their business, not the agency’s. *See* Fed. Mem. &
 10 Opp’n at 18. This flippant dismissal ignores that (i) the closure of hundreds of miles of routes
 11 assuredly affects the Counties and their citizens given the interconnected nature of the forest
 12 transportation network, and (ii) for county-maintained roads falling within the Plumas National
 13 Forest’s boundaries, the Service *does* possess jurisdiction, concurrent with the Counties. *See*
 14 *United States v. Armstrong*, 186 F.3d 1055, 1062 (8th Cir. 1999) (the federal government may
 15 regulate activity within the boundaries of a federal holding even if the activity is conducted on a
 16 non-federal inholding). *Cf.* 23 U.S.C. § 317 (authorizing the federal government to grant rights
 17 of way on federal property to state transportation departments and their nominees). The Service’s
 18 promise that it will use county roads as connectors when considering future additions to the
 19 system, PLU-B-001223, does not address the transportation conflicts *created by the already closed*
 20 *routes*. PLU-A-000314 (Plumas County Appeal). Thus, by failing to take into account how its
 21 mass route closure conflicts with the Counties’ transportation policies, the Service violated NEPA.
 22 *See Openlands v. U.S. Dep’t of Transp.*, 124 F. Supp. 3d 796, 808-09 (N.D. Ill. 2015) (NEPA
 23 requires an agency to explain how it will reconcile its proposed transportation project with local
 24 transportation plans that are based on different planning assumptions).

25 ///

26
 27 ¹⁰ Although emergency vehicles are exempt from the route closures, 36 C.F.R. § 212.51, the
 28 closures mean that these routes will not be maintained. Without maintenance, they will quickly
 become unusable, thereby endangering residents as well as emergency personnel.

IV

**THE SERVICE IMPROPERLY MADE SIGNIFICANT CHANGES
IN ITS FINAL ENVIRONMENTAL IMPACT STATEMENT**

NEPA requires that an agency prepare a supplemental impact statement if it makes substantial changes to its proposed action following the circulation of the draft impact statement. 40 C.F.R. § 1502.9(c)(1)(i); *Klamath Siskiyou Wildlands Ctr. v. Boody*, 468 F.3d at 560. The Forest Users contend that the Service violated this command by making several substantial changes relevant to the project's environmental impacts. As shown below, the Service's defense of this failure is without merit.

First, the Service contends that seasonally based use restrictions and buffer zones for wildlife nests were contained in the draft proposal, and therefore their addition in the final impact statement was not a change. Fed. Mem. & Opp'n at 28. The Service misses the point. The Forest Users do not deny that the concepts of seasonal closures and buffer zones were discussed in the draft impact statement. The objection is that their *implementation* in the final project resulted in the closure of additional routes about which the public had no opportunity to comment. For example, the final statement contains a number of routes within Alternative Five (ultimately adopted by the Service, PLU-B-000014 (ROD)) that contain seasonal use restrictions. In contrast, the draft statement does not propose such use restrictions for these routes.¹¹ Compare PLU-B-000498-519 (FEIS) with PLU-B-001038-1047 (DEIS) for routes 6M19, 6M20W, 6M22A, 6M51, 7M17, 8M47, 8M52, 9M21, 9M23, 10M19, 13M14. Similarly, many of these routes are identified in the final statement as affecting California spotted owls, northern goshawks, and bald eagles, but they were not so identified in the draft statement. Compare PLU-B-000498-518 (FEIS) with PLU-B-001038-1047 (DEIS) for routes 6M19, 6M20W, 6M32, 8M52, 9M21, 9M50, 10M19, 13M14.

Second, the Service argues that it merely "refined" its use of "quiet recreation" in the final impact statement to determine the effects of motorized vehicle use. Fed. Mem. & Opp'n at 27. The final impact statement uses this concept "to determine how each alternative responds to the

¹¹ Unlike for these routes, the Service placed an asterisk next to a route number when it believed that additional mitigation would be necessary. PLU-B-001037 (DEIS).

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1 significant issues . . . and to identify the potential for conflict with other recreation opportunities.”
 2 PLU-B-000100. In other words, “quiet recreation” plays a key role in the final impact statement’s
 3 assessment of the recreational effects of each of the alternatives. Yet not only is this term left
 4 undefined in the final statement, PLU-A-000176 (SAC/CORVA Appeal), it is nowhere to be found
 5 in the draft statement. Even the Service admits that the closest it got to discussing the notion is in
 6 an obscure reference to the “non-motorized recreation experience” being less affected by those
 7 alternatives “with fewer motorized trails.” PLU-B-000705-706 (DEIS), *cited in* Fed. Mem. &
 8 Opp’n at 27.

9 Third, the Service excuses its decision to close an additional 16 miles of trail on account
 10 of impacts to the California red-legged frog, because the change was minor and compelled by the
 11 Endangered Species Act’s consultation provisions. Fed. Mem. & Opp’n at 27. To the contrary,
 12 the change was substantial, not merely because of the number of miles closed, but also because
 13 their closure resulted in many other routes becoming “single-track loops” and therefore not usable.
 14 PLU-A-000175 (SAC/CORVA Appeal). *See id.* (discussing various route closures as a result of
 15 new frog information). The Service cannot shield this substantial change with the Endangered
 16 Species Act. Under the Act, formal consultation would *not* necessarily erase the Service’s
 17 discretion to designate. *See* 50 C.F.R. § 402.15(a) (consultation regulations) (“[T]he Federal
 18 agency shall determine whether and in what manner to proceed with the action . . .”). And
 19 regardless, many of the route closures were based on impacts to *potential* habitat, PLU-A-000180
 20 (SAC/CORVA Appeal); PLU-A-000321 (Butte County Appeal), which normally would not even
 21 raise an Endangered Species Act issue. *Cf. Ariz. Cattle Growers’ Ass’n v. U.S. Fish & Wildlife*,
 22 273 F.3d 1229, 1243-44 (9th Cir. 2001) (evidence of actual presence of a protected species needed
 23 to impose an incidental take statement following formal consultation).

24 Finally, the Service defends its addition of a Law Enforcement appendix to the final impact
 25 statement as a purported innocuous expansion of the law enforcement assumptions discussed in
 26 the draft statement. Fed. Mem. & Opp’n at 28. This argument ignores the critical point that “law
 27 enforcement” is about more than implementing the Travel Management Rule. It also includes
 28 activities like search and rescue and wildfire control, which the Service’s mass route closure will

1 significantly impede by preventing user-led maintenance. *See* PLU-E-000015 (Plumas County
2 Comment).

3 V

4 **THE SERVICE FAILED TO RESPOND**
5 **ADEQUATELY TO THE FOREST USERS' COMMENTS**

6 NEPA requires an agency to respond to public comments in the final impact statement. 40
7 C.F.R. § 1503.4(a). Pursuant to this obligation, the agency must give comments “good faith
8 attention.” *Warm Springs Dam Task Force v. Gribble*, 565 F.2d 549, 554 (9th Cir. 1977). The
9 Service violated this duty in several key respects. To begin with, the Service cannot avoid
10 considering and responding to comments on the pretense that the comments, if adopted, would not
11 have required a change to the “proposed rule.” Fed. Mem. & Opp’n at 25. NEPA is an
12 informational not a substantive tool. *See Robertson v. Methow Valley Citizens Council*, 490 U.S.
13 332, 349 (1989) (NEPA serves “a larger informational role” and, “perhaps more significantly,
14 provides a springboard for public comment”). To ignore public comment because it is merely
15 informational—or because it would, if followed, expand the sources of the agency’s information,
16 PLU-D-007580 (CORVA Comment)—would undercut NEPA’s essential purpose.

17 Second, the Service failed to respond to the Forest Users’ comment that the environmental
18 impact statement does not address how the project substantially limits the opportunities for a varied
19 riding experience in the Plumas National Forest. The Service responds that it did consider impacts
20 to the number and type of experiences available, and that the selected alternative would increase
21 these opportunities. Fed. Mem. & Opp’n at 24. But the issue is not just the type and number of
22 opportunities (although that is significant¹²); it is their *interconnectedness* as well. *See* PLU-D-
23 007160 (SAC Comment) (noting that the Service must take into account how “a variety of trail
24 riding experiences” and an “increas[e in] the amount of motorized recreation opportunities” can
25 be obtained by designating “loops [and] connectors”). It matters little to a rider that a variety of
26

27 ¹² Even the Plumas Forest Supervisor acknowledged that her route designations do not provide
28 adequate recreational opportunities. PLU-C-002299 (Service press release) (“[W]e do have a real
shortage of specialty trail experiences for recreationists such as single track motorcycle riders.”).

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1 riding opportunities exist if they are scattered throughout the 1.1 million-acre forest and are not
 2 interconnected. Further, that the selected alternative performs well as against other alternatives
 3 that would close *more routes* says little about how the closure of some 700 miles of routes affects
 4 opportunities for varied riding experiences.

5 Third, and relatedly, the Service failed to consider Butte County's request that county roads
 6 be considered as loop connectors, thereby justifying the designation of additional non-system
 7 routes. PLU-D-007903. The Service responds that it has no control over county roads, and that
 8 such consideration can be provided in the future. Fed. Mem. & Opp'n at 25. But as noted above,
 9 the Service *does* have concurrent jurisdiction over county roads within the forest's boundaries, and
 10 the promise to consider future route designations does not explain why these county roads cannot
 11 serve as connectors now.

12 Fourth, the Service did not adequately respond to the Forest Users' objection to the
 13 agency's adoption of a one-vehicle-length rule for its designations. *See, e.g.*, PLU-D-007155
 14 (SAC Comment); PLU-A-000315 (Plumas County Appeal). *See also* PLU-A-000158 (SAC
 15 Appeal) ("Virtually every other Region in the national has chosen 300' [not one vehicle length]
 16 as the distance from a designated route for dispersed camping."). The Service's response is that
 17 the Travel Management Rule requires one vehicle length. Fed. Mem. & Opp'n at 25. But the Rule
 18 contains no such restriction. *See* 36 C.F.R. § 212.51(b). In fact, during the administrative appeal
 19 process, the Service contended that the one-vehicle-length rule is compelled by the Forest Service
 20 Manual. PLU-A-000056 (Appeal Decision). This of course is the same manual that the Service
 21 now argues is not binding. *See* Fed. Mem. & Opp'n at 11 (citing *W. Radio Servs. Co., Inc. v. Espy*,
 22 79 F.3d 896, 901 (9th Cir. 1996), for the proposition that the agency's manual is not binding).
 23 Such conflicting legal rationales do not satisfy the Service's obligation to consider comments in
 24 good faith and to respond meaningfully.¹³

25 ///

26 _____
 27 ¹³ Contrary to the Service's contention, Fed. Mem. & Opp'n at 29-30, the Forest Users have not
 28 "waived" their claims against the scientific basis for the agency's decision-making, or its socio-
 economic impact analysis. Rather, they raise them in the context of their onsite analysis,
 Maintenance Level 3, and "hard look" arguments. *See* Pls.' Summ. J. Mem. at 11-16, 24-26.

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VI

**THE SERVICE FAILED TO CONDUCT AN
ADEQUATE CUMULATIVE IMPACTS ANALYSIS**

The Service relies on principles of deference to defend its decision to limit its cumulative impacts analysis to the borders of the Plumas National Forest. Fed. Mem. & Opp’n at 29. Generally speaking, such an analysis should follow a project’s boundaries. But this project is different because there are several national forests either contiguous to or close to the Plumas National Forest. PLU-D-007586 (CORVA Comment). These other forests must undergo the same travel management process. It is therefore unreasonable to ignore how, for example, the closure of so many routes on the Plumas National Forest will lead to increased use on (presumably) fewer routes on other forests, and vice versa. *Cf. Nat. Res. Defense Council, Inc. v. Hodel*, 865 F.2d 288, 298-300 (D.C. Cir. 1988) (requiring an interregional cumulative effects analysis in light of evidence that marine species would travel between project areas). These cumulative effects will exacerbate all of the impacts otherwise attributable to the Service’s mass route closure. Failing to disclose these impacts therefore deprived the public of “a complete understanding of the environmental effects [that the] proposed action will cause.” *N.C. All. for Transp. Reform, Inc. v. U.S. Dep’t of Transp.*, 151 F. Supp. 2d 661, 698 (M.D.N.C. 2001).

CONCLUSION

For the foregoing reasons, and for those stated in the Forest Users’ summary judgment brief, the Forest Users’ motion for summary judgment should be granted, and the Service’s cross-motion denied.

DATED: June 9, 2016.

Respectfully submitted,
M. REED HOPPER
DAMIEN M. SCHIFF

By /s/ Damien M. Schiff
DAMIEN M. SCHIFF

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on June 9, 2016, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Eastern District of California through the Court's CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the Court's CM/ECF system.

/s/ Damien M. Schiff
DAMIEN M. SCHIFF

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1 M. REED HOPPER, No. 131291
E-mail: mrh@pacificallegal.org
2 DAMIEN M. SCHIFF, No. 235101
E-mail: dms@pacificallegal.org
3 Pacific Legal Foundation
930 G Street
4 Sacramento, California 95814
Telephone: (916) 419-7111
5 Facsimile: (916) 419-7747

6 Attorneys for Plaintiffs
7
8

9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA
11

12 AMY GRANAT, CORKY LAZZARINO, SIERRA)
ACCESS COALITION; CALIFORNIA OFF-)
13 ROAD VEHICLE ASSOCIATION; THE)
COUNTY OF PLUMAS; AND THE COUNTY OF)
14 BUTTE,)

15 Plaintiffs,)

16 v.)

17 UNITED STATES DEPARTMENT OF)
AGRICULTURE, a federal agency; TOM)
18 VILSACK, in his official capacity as Secretary of)
the UNITED STATES DEPARTMENT OF)
19 AGRICULTURE; UNITED STATES FOREST)
SERVICE, a federal agency; THOMAS L.)
20 TIDWELL, in his official capacity as Chief of the)
UNITED STATES FOREST SERVICE; RANDY)
21 MOORE, in his official capacity as PACIFIC)
SOUTHWEST REGIONAL FORESTER; ALICE)
22 CARLTON, in her official capacity as the former)
PLUMAS NATIONAL FOREST SUPERVISOR;)
23 AND EARL FORD, in his official capacity as)
PLUMAS NATIONAL FOREST SUPERVISOR,)

24 Defendants.
25
26
27
28

No. 2:15-cv-00605-MCE-EFB (TEMP)

**PLAINTIFFS' RESPONSE
TO FEDERAL DEFENDANTS'
STATEMENT OF UNDISPUTED
FACTS IN SUPPORT OF
CROSS-MOTION FOR
SUMMARY JUDGMENT**

Date: July 28, 2016
Time: 2:00 p.m.
Courtroom: 7, 14th Floor
Judge: Hon. Morrison C. England, Jr.

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930 G Street
Sacramento, CA 95814
(916) 419-7111 FAX (916) 419-7747

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 Sacramento, CA 95814
 (916) 419-7111 FAX (916) 419-7747

1 3. Prior to the 2005 Travel Management Rule, the Plumas National Forest contained
 2 approximately 4,137 miles of National Forest System (“NFS”) roads and 130 miles of NFS
 3 motorized trails. These roads and trails resulted from historical and ongoing access needs for
 4 forest and fuels management activities, mineral exploration and mining, livestock grazing,
 5 recreational activities, fire prevention and suppression, and for reaching private parcels within the
 6 Plumas National Forest. PLU-B-000053.

7 **RESPONSE:** Undisputed.

8 4. Much of this extensive system was already part of the National Forest
 9 Transportation System (“NFTS”). PLU-B-000053.

10 **RESPONSE:** Undisputed in that roads discussed in Paragraph 3 were part of the National
 11 Forest Transportation System. Disputed in that “[m]uch” is not defined.

12 5. Prior to the 2005 Travel Management Rule, the 4,137 miles of NFS roads were
 13 designated by maintenance level as follows:

Operational Maintenance Level	Miles
1	262
2	3,241
3	404
4	106
5	124
Total	4,137

20
 21 PLU-B-000013; PLU-B-000126.

22 **RESPONSE:** Undisputed.

23 6. Maintenance level 1 roads are not subject to the requirements of the Highway
 24 Safety Act. PLU-C-000856. Vehicular traffic is eliminated, including administrative traffic. *Id.*
 25 ML-1 is defined as “[a]ssigned to intermittent service roads during the time they are closed to
 26 vehicular traffic. The closure period must exceed 1 year. Basic custodial maintenance is
 27 performed to keep damage to adjacent resources to an acceptable level and to perpetuate the road
 28 to facilitate future management activities. Emphasis is normally given to maintaining drainage

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1 facilities and runoff patterns. Planned road deterioration may occur at this level. Appropriate
2 traffic management strategies are ‘prohibit’ and ‘eliminate.’ Roads receiving level 1 maintenance
3 may be of any type, class or construction standard, and may be managed at any other maintenance
4 level during the time they are open for traffic. However, while being maintained at level 1, they
5 are closed to vehicular traffic, but may be open and suitable for nonmotorized uses.” *Id.*

6 **RESPONSE:** Undisputed.

7 7. Maintenance level 2 roads are not subject to the requirements of the Highway Safety
8 Act. PLU-C-000848. They have low traffic volume and low speed, and are not suitable for
9 passenger cars. *Id.* ML-2 is defined as “[a]ssigned to roads open for use by high clearance
10 vehicles. Passenger car traffic is not a consideration. Traffic is normally minor, usually consisting
11 of one or a combination of administrative, permitted, dispersed recreation, or other specialized
12 uses. Log haul may occur at this level. Appropriate traffic management strategies are either to
13 (1) discourage or prohibit passenger cars or (2) accept or discourage high-clearance vehicles.” *Id.*

14 **RESPONSE:** Undisputed.

15 8. Maintenance level 3 roads are subject to the requirements of the Highway Safety
16 Act and the Manual of Uniform Traffic Control Devices (“MUTCD”). PLU-C-000836. They have
17 low to moderate traffic volume. *Id.* ML-3 is defined as “[a]ssigned to roads open and maintained
18 for travel by prudent drivers in standard passenger cars. User comfort and convenience are low
19 priorities. Roads in this maintenance level are typically low speed, single lane with turnouts, and
20 spot surfacing. Some roads may be fully surfaced with either native or processed material.
21 Appropriate traffic management strategies are either ‘encourage’ or ‘accept.’ ‘Discourage’ or
22 ‘prohibit’ strategies may be employed for certain classes of vehicles or users.” *Id.*

23 **RESPONSE:** Disputed in that signage for many roads of Maintenance Level 3 and higher
24 in the Plumas National Forest does not meet the MUTCD. PLU-A-000155 (Sierra Access
25 Coalition (SAC)/California Off-Road Vehicle Association (CORVA) Appeal).

26 9. Maintenance level 4 roads are subject to the requirements of the Highway Safety
27 Act and the MUTCD. PLU-C-000828. They have moderate traffic volume and speeds. *Id.* ML-4
28 is defined as “[a]ssigned to roads that provide a moderate degree of user comfort and convenience

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1 | at moderate travel speeds. Most roads are double lane and aggregate surfaced. However, some
2 | roads may be single lane. Some roads may be paved and/or dust abated. The most appropriate
3 | traffic management strategy is ‘encourage.’ However, the ‘prohibit’ strategy may apply to specific
4 | classes of vehicles or users at certain times.” *Id.*

5 | **RESPONSE:** Disputed. *See* Resp. ¶ 8.

6 | 10. Maintenance level 5 roads are subject to the requirements of the Highway Safety
7 | Act and the MUTCD. PLU-C-000820. They have the highest traffic volume and speeds and
8 | usually are paved or chip-sealed. *Id.* ML-5 is defined as “[a]ssigned to roads that provide a high
9 | degree of user comfort and convenience. These roads are normally double-lane, paved facilities.
10 | Some may be aggregate surfaced and dust abated. The appropriate traffic management strategy
11 | is ‘encourage.’” *Id.*

12 | **RESPONSE:** Disputed. *See* Resp. ¶ 8.

13 | 11. During the summer and fall of 2004, an independent contractor reviewed and
14 | mapped routes and areas used by off-highway vehicles (“OHVs”) on the Forest. PLU-B-000058.

15 | **RESPONSE:** Undisputed. The Forest Users note that the Service’s contractor did not
16 | coordinate with Plumas and Butte Counties to elicit their input on the review and mapping of these
17 | Forest routes. *See* PLU-A-000313-315 (Plumas County Appeal); PLU-A-000319-320 (Butte
18 | County Appeal).

19 | 12. In 2005, the Plumas National Forest completed an extensive inventory of
20 | unauthorized routes on NFS lands open to cross-country travel and identified approximately 1,107
21 | miles of unauthorized routes. PLU-B-000052.

22 | **RESPONSE:** Disputed. The 1,107 miles of non-system routes are properly characterized
23 | as “unclassified,” not “unauthorized,” because they were fully legal to use. PLU-D-007131-7132
24 | (SAC Comment); PLU-D-007607 (CORVA Comment). The inventory was not comprehensive.
25 | PLU-D-007175 (SAC Comment) (“There is still a vast array of old temporary roads and skid trails
26 | present of the landscape that haven’t been identified.”). The vast majority of the unclassified
27 | routes were created in connection with approved timber harvests. *See* PLU-D-007131-7132 (SAC
28 | Comment). The Service had the opportunity to coordinate its route inventory with Butte

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1 and Plumas Counties, but declined. *See* PLU-A-000313-315 (Plumas County Appeal);
2 PLU-A-000319-320 (Butte County Appeal).

3 13. The inventory of unauthorized routes involved the examination of previous records
4 (existing road and trail atlases, forest maps, maintenance plans, maintenance expenditures, etc.)
5 to populate the Forest Service’s infrastructure database (“INFRA”) and verify the Forest
6 Transportation Atlas. PLU-B-000053. Since then, adjustments to the Transportation Atlas and
7 INFRA database have been made to correct errors and account for NFS roads that were either
8 newly constructed or overlooked. *Id.*

9 **RESPONSE:** Undisputed. The Forest Service began to populate the INFRA database in
10 2002. PLU-B-000053 (FEIS). Again, the Forest Users note that these routes are better described
11 as unclassified, not unauthorized. Moreover, to the extent that these routes were created as part
12 of a Service-approved timber harvest and remained in place, it would be particularly inapt to refer
13 to them as “unauthorized.”

14 14. The 2005 Motorized Travel Management Rule defines unauthorized routes as roads
15 or trails that are not included in an official forest transportation atlas. 36 C.F.R. § 212.1.
16 Generally, unauthorized routes are created through repeated use and were not planned by the
17 Forest Service. PLU-B-000052. These routes were developed without agency authorization,
18 environmental analysis, or public involvement. PLU-B-000616. For example, many unauthorized
19 routes do not currently have features for proper drainage or erosion control, and thus may have
20 potentially increased sedimentation effects on streams. *See* PLU-C-000874 (70 Fed. Reg. at
21 68265); PLU-B-000052.

22 **RESPONSE:** Disputed. The Travel Management Rule defines unauthorized routes as
23 those that not included in the forest transportation atlas *and* that are not a forest road or trail or
24 temporary road or trail. 36 C.F.R. § 212.1. The Rule made no findings applicable to the Plumas
25 National Forest with respect to erosion control, sedimentation, or any other alleged impact from
26 off-road vehicle use. Typically, the Service was aware of routes being created by the public,
27 especially those created as a result of Service-approved actions (such as timber harvests). The
28 Service always has enjoyed the authority to respond immediately if the use of any route posed a

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1 threat to forest resources. *See, e.g., id.* § 261.15(h) (prohibiting off-road vehicle use that “damages
2 or unreasonably disturbs the land, wildlife, or vegetative resources”). That the Service often did
3 not act amounts to a tacit decision to allow a route’s use to evolve naturally.

4 15. In December 2006, the Plumas implemented a forest order to close the forest to
5 crosscountry motor vehicle travel while it undertook a National Environmental Policy Act
6 (“NEPA”) and decision-making process to implement Subpart B of the travel management
7 regulations. PLU-C-002315. Similar forest closure orders were issued on an annual basis through
8 December 2010. PLU-C-002302, 2308, 2310.

9 **RESPONSE:** Undisputed. The Forest Users note, however, that these temporary closures
10 cannot fairly be used as a basis to support permanent closures. *See Half Moon Bay Fishermans’*
11 *Marketing Ass’n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988) (“NEPA clearly requires that
12 consideration of environmental impacts of proposed projects take place *before* [a final decision]
13 is made.” (quoting *LaFlamme v. FERC*, 842 F.2d 1063, 1071 (9th Cir.1988))).

14 16. After the 2005 Travel Management Rule was promulgated, the Forest Service held
15 a series of public workshops across the Plumas National Forest to discuss motorized travel
16 management and which routes should be added to the NFTS. PLU-B-000058-59, PLU-C-
17 002313-14, PLU-F-000044.

18 **RESPONSE:** Undisputed to the extent that the cited record pages establish that the Forest
19 Service held three public meetings in April, 2007, and three public workshops in May, 2007.
20 These meetings, however, do not constitute “coordination” under the Travel Management Rule and
21 other authority. *See* Pls.’ Resp. & Reply at 8-9.

22 17. The Forest Service solicited public comment on its proposed action and held a series
23 of public meetings to explain the proposed action. PLU-B-000058-59, PLU-D-012240,
24 -12244-12245, -12250. During 2004 and 2005, the Forest also sought route information from the
25 public and validated route locations and mapped them. PLU-A-000565-566, PLU-D-014292,
26 -14331-14336, -14345-14347, -14351-14354, -14412, -14416-14424.

27 **RESPONSE:** Disputed. On-site verification was not conducted for all of the inventoried
28 routes, *see* PLU-B-000081 (FEIS) (field review conducted for only 410 miles of the inventoried

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1 routes), nor were the Forest Service’s validation and mapping accurate, PLU-A-000160-164
2 (SAC/CORVA Appeal) (illustrating the inaccuracy of the Forest Service’s GPS data). The
3 Service’s information solicitation process was not systematic or effective. For example, the agency
4 made no effort to solicit information from regular forest vacationers. *See* PLU-A-000315 (Plumas
5 County Appeal).

6 18. On May 14, 2005, the Forest Service provided on-the-ground training for the public
7 to locate and map their favorite riding areas so they could effectively provide that information to
8 the Forest Service. PLU-D-014238-14239, -14248.

9 **RESPONSE:** Undisputed in that the Service provided training. Disputed to the extent that
10 such training was effective. *See* PLU-D-013991 (newspaper article quoting a SAC member
11 observing that the Service lost the initial user-collected data sets); PLU-A-000315 (Plumas County
12 Appeal) (noting that the Service’s approach to outreach “relies upon the interest and knowledge
13 of a relatively limited segment of the public that has the ability to participate in the Forest Service
14 process,” such that “[r]ecreationists who may visit Plumas County only on vacation can look
15 forward to discovering that access to their favorite campsites has been eliminated”).

16 19. In December 2006, public meetings were held in Oroville, Portola, and Quincy
17 explaining the temporary Forest Order (effective December 31, 2006) that restricted OHV use to
18 mapped roads, trails and areas. PLU-D-014137-14143, 14146.

19 **RESPONSE:** Undisputed.

20 20. By April 2007, the Plumas National Forest developed the “first cut” route map,
21 which included 220 miles of proposed motorized trails. PLU-D-014001, 014005-14068; PLU-G-
22 001380-1395. The “first cut” consisted of known routes used by the public, including destinations,
23 loops, and spur routes to fishing access and favorite dispersed camping sites. PLU-B-000058. The
24 “first cut” avoided routes on private land with no right of way, routes where motorized use would
25 conflict with existing uses, and routes with measurable resource impacts. *Id.*

26 **RESPONSE:** Disputed. The Forest Service’s “first cut” analysis was not accurate. PLU-
27 A-000160-164 (SAC/CORVA Appeal); PLU-D-007132-7133 (SAC Comment).

28 ///

1 21. In the fall of 2007 and summer of 2008, the Forest Service completed field surveys
2 for all of the approximately 410 miles proposed for addition to the NFTS and conducted
3 subsequent field visits for potentially problematic routes. PLU-B-000081. During this process,
4 the Service could have but did not coordinate its efforts with Butte and Plumas Counties. *See*
5 PLU-A-000319-320 (Butte County Appeal).

6 **RESPONSE:** Disputed. The so-called “problematic routes” did not include any routes that
7 had been dismissed as a result of the Forest Service’s “first cut” exercise. *See* PLU-B-000081
8 (FEIS).

9 22. The Plumas National Forest then engaged in an extensive public participation
10 process to obtain comments and input regarding its “first cut” route map. PLU-B-000058-59,
11 PLUC-002313-2314; PLU-D-014001-02, -14091-92; PLU-F-000044. In the spring of 2007, the
12 Forest held three public meetings and three public workshops to identify which of the routes and
13 areas should become part of the proposed action, the type of use that each would have, and routes
14 to be considered for dispersed recreation access. PLU-B-000562. The concept of “mixed use”
15 (combining highway legal and non-highway legal vehicles on the same road) was also introduced
16 during these meetings. *Id.* At the first session of the 2007 two-part series, public meetings were
17 held in Quincy (April 17) Portola (April 18), and Oroville (April 19). PLU-D-014001-02,
18 -14091-92. At the second set of workshops, held in Blairsden (May 2), Quincy (May 3) and
19 Oroville (May 10), individuals worked with Forest Service specialists to identify important routes.
20 PLU-B-000059. Groups shared their ideas and their various concerns. Roughly 300 people
21 participated in these workshops. *Id.* Afterwards, the Forest Service issued a press release that
22 provided information on the meetings and the outcome. *Id.*; PLU-D-013955-82; *see*
23 PLU-D-013832-88 (scoping documents).

24 **RESPONSE:** Disputed. The public participation process relevant to the Forest Service’s
25 “first cut” route map was not “extensive.” *See* PLU-A-000181 (SAC/CORVA Appeal) (noting
26 that, because “[n]o map has been produced which shows the routes that will be administratively
27 abandoned,” “[t]he public cannot understand the impacts of the routes that will be closed to their
28 use by viewing the maps produced in the DEIS and FEIS,” and therefore “it is impossible to

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1 understand where the 873 miles of routes are being eliminated”); PLU-A-000314 (Plumas County
 2 Appeal). *See also* PLU-D-013927 (SAC Comment) (noting that the Forest Service’s delay in
 3 providing electronic copies of its spreadsheets and maps made it very difficult to elicit information
 4 from SAC members). Importantly, contrary to its subsequent actions, the Service told the public
 5 that it was unnecessary to identify dispersed campsites. *See* PLU-D-014429 (“We
 6 are . . . considering the campsite as part of the road and trail system . . . allowing use of dispersed
 7 campsites within a reasonable distance from roads and motorized trails Camp sites beyond
 8 a reasonable distance will be connected with a designated trail to allow access.”). The Forest Users
 9 also note that the Service could have coordinated with Butte and Plumas Counties during this
 10 process but chose not to. *See* PLU-A-000319-320 (Butte County Appeal).

11 23. The determination of which routes would be included in the various alternatives was
 12 made with extensive public input and involvement over the course of four years and more than 20
 13 public meetings and workshops. PLU-B-000024; *see e.g.*, PLU-C-002313-14 (cover letter for
 14 public meetings); PLU-D-012240, 12244-45, 12250 (sign in sheets); -14238-39 (website
 15 announcing public workshop). The public had additional opportunities to comment on and
 16 participate in the Forest Service’s decision-making process during the 60-day public scoping
 17 period and the 75-day Draft Environmental Impact Statement (“DEIS”) comment period.
 18 PLU-B-000059; *see e.g.*, PLU-D-000001-14448 (public comments); PLU-B-001135-760
 19 (comments and response to comments).

20 **RESPONSE:** Disputed. The public participation process relevant to the Service’s route
 21 designation process was not “extensive.” *See* PLU-D-013926 (denying SAC’s request for an
 22 additional 60 days to provide relevant feedback on the route designation process); PLU-D-007797
 23 (SAC Comment) (noting that Service personnel still had not provided critical management
 24 documents two months after they had been requested); PLU-D-007178 (SAC Comment)
 25 (discussing the limited opportunities to comment on the draft impact statement). *See also* Resp.
 26 ¶ 22.

27 24. The Forest Service Interdisciplinary Team took all of this information and
 28 developed the proposed action for the Notice of Intent to Prepare an Environmental Impact

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1 Statement (“NOI”). PLU-B-000058-59, -1114-18. The proposed action was designed to include
2 as many routes as possible that were requested by the public. PLU-B-000058-59. This inclusive
3 approach was used so that these routes could be analyzed in detail and their effects disclosed as
4 part of this NEPA process. *Id.*

5 **RESPONSE:** Disputed. The route designation process was exclusive, not inclusive, given
6 that the vast majority of routes requested by the public were not even given on-site analysis, much
7 less serious consideration for designation. PLU-A-000160-164 (SAC/CORVA Appeal). *See* PLU-
8 D-007134-7135 (SAC Comment) (requesting the designation of all routes except those with
9 documented “egregious” resource damage). The Forest Users also note that the Service could have
10 coordinated with Butte and Plumas Counties during this process but chose not to. *See* PLU-A-
11 000319-320 (Butte County Appeal).

12 25. In January 2008, the Forest Service completed the Proposed Action and NOI based
13 on comments from the meetings held in the spring of 2007. PLU-B-000059, -1114-18. The
14 comment period on the proposed action began on January 3, 2008, and ended March 3, 2008.
15 Presentations to a variety of groups, phone calls, news releases, website postings and emails were
16 used to alert the public of the opportunity to comment on the proposed action. PLU-B-000059.
17 Public meetings were held in Blairsden (January 15), Quincy (January 22), and Oroville
18 (January 29) to explain the Proposed Action. Over 3,300 comments were received, although many
19 were identical emails. *Id.*

20 **RESPONSE:** Undisputed. The Forest Users note that the Service could have coordinated
21 with Butte and Plumas Counties during this process but chose not to. *See* PLU-A-000319-320
22 (Butte County Appeal).

23 26. The proposed action was developed to address two key needs: (1) regulation of
24 unmanaged public cross-country motorized vehicle travel in accordance with Subpart B of the
25 2005 Travel Management Rule, 36 C.F.R. Part 212, Subpart B, and (2) making limited changes
26 to the NFTS to provide motorized access to existing dispersed recreation opportunities (e.g.,
27 camping, hunting, fishing, hiking, horseback riding) and to provide a diversity of motorized

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1 recreation opportunities (e.g., 4x4 vehicles, motorcycles, allterrain vehicles, passenger vehicles).
2 PLU-B-000014, -55-56.

3 **RESPONSE:** Undisputed to the extent that the statement accurately reflects the Purpose
4 and Need as set forth in the final impact statement. Disputed to the extent that the Purpose and
5 Need were appropriately ascertained. *See* PLU-D-007133-7134 (SAC Comment) (noting that the
6 Purpose and Need’s characterization of the effects of off-road vehicle travel inappropriately
7 assumed the conclusion before analysis).

8 27. The Project implements provisions of the 2005 Travel Management Rule designed
9 to enhance management of NFS lands; sustain natural resource values through more effective
10 management of motor vehicle use; and provide opportunities for motorized recreation experiences
11 on NFS lands. PLU-B-000013. Management strategies were developed to balance resource
12 protection, cultural values and recreation opportunities. PLU-B-000465. The Forest Service
13 recognized there was a need for limited additions to the NFTS to provide motor vehicle access to
14 dispersed recreation opportunities and to provide a diversity of motorized recreation opportunities.
15 PLU-B-000014. It is also understood that these purposes had to be balanced with the overall
16 purpose of regulating unmanaged motor vehicle travel and the related detrimental effects.
17 PLU-B-000577-78.

18 **RESPONSE:** Disputed. Motorized vehicle access does not necessarily raise resource
19 issues, and the Project does not appropriately balance motorized vehicle access with other
20 objectives. *See, e.g.,* PLU-A-000147, 151-53, 158-59, 174-75 (SAC/CORVA Appeal); PLU-A-
21 000320-322 (Butte County Appeal); PLU-A-000314-315 (Plumas County Appeal). The Purpose
22 and Need sections of the draft and final environmental impact statements substantially differ. The
23 former refers to a need for “limited changes” to the forest’s transportation system, PLU-B-000669,
24 whereas the latter refers to a need for “limited additions,” PLU-B-000056.

25 28. The Forest staff held discussions with and/or sought input from Plumas and Butte
26 County officials on numerous occasions between 2003 and 2009. PLU-A-000057; PLU-D-
27 007890, -7902, -9582 (sign-in sheets); PLU-E-000014, -20, -26, -31-32, -34-35, -49, -58 (sign-in
28 sheets, lists of meetings, letters). At least four formal meetings and six informal meetings occurred

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1 with Plumas County officials. PLU-A-000057; PLU-D-007890, -7902, -7904. At least two Butte
2 County representatives were included on the Forest’s travel management mailing list.
3 PLU-A-000057. In addition to the scheduled public workshops, the Forest staff offered to set up
4 private, individual meetings with two Butte County Supervisors. *Id.*

5 **RESPONSE:** Disputed. These meetings were intended to respond to the concerns of the
6 general public, not the unique concerns of Butte and Plumas Counties as local governments. *See*
7 PLU-A-000319 (Butte County Appeal); PLU-A-000150-151 (SAC/CORVA Appeal).

8 29. The record indicates that the Forest asked for (and was granted) a discretionary time
9 extension by the Regional Forester’s office for the stated purpose of “. . . fulfilling the
10 participatory intent of the NEPA process” with “Plumas, Lassen, and Butte counties”
11 PLU-A-000057.

12 **RESPONSE:** Undisputed as to the granting of the extension, but disputed to the extent that
13 the statement alleges that NEPA’s directives concerning analysis of consistency with local
14 government planning efforts were satisfied. *See Resp.* ¶ 28.

15 30. On December 29, 2008, the Forest Service published the DEIS for the Project and
16 made the DEIS available for public comment. PLU-B-001113. The Plumas National Forest sent
17 letters to interested parties, tribes and reviewing agencies providing them either with copies of the
18 DEIS or a summary and a link to a website at which the documents and maps could be
19 downloaded. PLU-B-000059.

20 **RESPONSE:** Disputed. Not all truly interested parties—such as regular vacationers to
21 the Plumas National Forest—were notified. *See* PLU-A-000315 (Plumas County Appeal). *See*
22 *also* PLU-D-008106 (SAC Comment) (noting that the draft impact statement’s listing of
23 inventoried routes did not contain “route numbers making it difficult if not impossible to comment
24 on individual routes”).

25 31. The Environmental Protection Agency published a notice of availability of the DEIS
26 in the Federal Register on December 29, 2008, which initiated the 45-day comment period.
27 PLU-B-001113. The comment period subsequently was extended through March 3, 2009.
28 PLU-B-000616, -646. The Forest also published a legal notice regarding availability of the DEIS

1 | in the Feather River Bulletin on January 7, 2009, and sent a follow-up letter to interested parties
2 | and reviewing agencies on February 6, 2009. PLU-B-000648; *see* PLU-D-007955-64.

3 | **RESPONSE:** Disputed. *See* Resp. ¶ 30.

4 | 32. The Forest received over 4,310 public comment letters on the DEIS, including 340
5 | original responses and 3,970 form letters. PLU-B-000616. The Forest Service reviewed all
6 | submitted comments and suggestions.

7 | **RESPONSE:** Disputed. The Service did not give legally adequate consideration to the
8 | Forest Users' comments and suggestions. *See* PLU-A-000150-151, 000164-173 (SAC/CORVA
9 | Appeal); PLU-A-000319-322 (Butte County Appeal); PLU-A-000313-314 (Plumas County
10 | Appeal).

11 | 33. Public comment on the Plumas National Forest DEIS was far-reaching, often highly
12 | detailed, and represented a wide range of values and perspectives with respect to motorized travel
13 | management. PLU-B-000618. While many respondents commented on specific topics within the
14 | DEIS, such as the purpose and need, cumulative impacts, best management practices (BMPs),
15 | document composition, etc., most respondents requested specific updates, changes, or additional
16 | data be added to various technical studies (resource reports). *Id.* Many respondents also
17 | commented on the DEIS Alternatives with different respondents advocating for each alternative.
18 | PLU-B-000619-20.

19 | **RESPONSE:** Undisputed.

20 | 34. The comment letters represented a wide range of views regarding motorized travel
21 | management. Respondents expressed polarized views on how motorized and nonmotorized
22 | recreation activities should be managed. PLU-B-000620-21. Regarding OHV use, many
23 | respondents expressed the view that the agency should recognize that unmanaged OHV use has
24 | resulted in unauthorized routes which have damaged the forest by increased soil compaction and
25 | erosion, increased sedimentation, water quality degradation, the spread of noxious weeds,
26 | increased fire risk, damage to cultural resources, habitat destruction and fragmentation, increased
27 | disturbance to sensitive wildlife, etc. *Id.* Other respondents were concerned that the current
28 | transportation system continues to allow motor vehicle use in ecologically and socially important

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1 roadless areas, in proposed Wild and Scenic River corridors, and in sensitive wildlife habitat. *Id.*
2 Individuals who oppose OHV use urged the Plumas National Forest to “restrict and control, rather
3 than enlarge, the road network in this forest that is open to OHVs.” *Id.*

4 **RESPONSE:** Disputed to the extent that the statement alleges that these comments are
5 accurate in their portrayal of the effects of motorized vehicle access on the Plumas National Forest.
6 *See* PLU-A-000147, 000160-164 (SAC/CORVA Appeal); PLU-D-007643-7644 (CORVA
7 Comment).

8 35. Conversely, many individuals support OHV use and believe that the Plumas
9 National Forest should preserve motorized access to public lands. PLU-B-000621. Those
10 respondents expressed the view that OHV opportunities should be enhanced and expanded because
11 of significant demand for sustainable and responsible motorized recreation. *Id.* Many respondents
12 also stated that OHV groups donate time and manpower to not only maintain trails, but help clean
13 up trails damaged by the carelessness of others. Those who support OHV use also mention various
14 social values and benefits they attribute to OHV use. *Id.*

15 **RESPONSE:** Undisputed.

16 36. In addition to these two views on motorized recreation, there were some individuals
17 who requested that OHV activities be managed better but not eliminated. PLU-B-000621. One
18 group believed, for example, that “OHV use can be managed in a proper way to protect critical
19 forest resources while providing a recreational experience.” *Id.*

20 **RESPONSE:** Undisputed.

21 37. Forest Service staff received several letters from Plumas, Butte, and Lassen
22 Counties as part of its planning process. Those letters are included in the administrative record and
23 summarized as follows:

- 24 • Scoping letter from Jack Hanson, Lassen County: The letter urged the Lassen,
25 Plumas, and Modoc National Forests to be consistent with their travel management
26 planning. PLU-E-000049.

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- 1 • Scoping letter from Robert Perrault, Plumas County: The letter addressed several
- 2 issues, mostly related to the classification and status of roadways and a general
- 3 objection to reducing the number of unauthorized routes. PLU-E-000035.
- 4 • Scoping letter from Curt Josiassen, Butte County: The letter addressed their
- 5 support of mixed use on non-paved county roads and similar access on NFS level
- 6 3 and 4 roads. PLU-E-000034.
- 7 • Letter from Bill Connelly, Butte County: The letter requested an extension of the
- 8 comment period for the DEIS. PLU-E-000032.
- 9 • DEIS comment letter from Lloyd Keefer, Lassen County: The letter requested an
- 10 extension of the comment period for the DEIS. PLU-E-000030.
- 11 • DEIS comment letter from Mike Crump, Butte County: The letter resubmitted the
- 12 county's scoping letter from Curt Josiassen and requested that a list of mixed use
- 13 non-paved county roads be used as loop access connectors to NFTS roads and
- 14 trails. PLU-E-000026.
- 15 • DEIS comment e-mail from Ian Sanders, Butte County: The e-mail resubmitted
- 16 Curt Josiassen and Mike Crump's letters and a list of county roads. PLU-E-000020.
- 17 • DEIS comment letter from Sharon Thrall, Plumas County: The letter addressed
- 18 several objections to the DEIS, including whether the Project amends the Land and
- 19 Resource Management Plan for the Forest, lack of analysis of land use designations
- 20 under the county's General Plan, lack of analysis of the county's pending
- 21 Herger-Feinstein Quincy Library Group Forest Recovery Act projects, the need for
- 22 evacuation routes in coordination with the county's Fire Plan, allowing limited use
- 23 of motor vehicles off routes, and the failure to coordinate uses adequately between
- 24 Forest routes and the County road system. PLU-E-000014.

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1 **RESPONSE:** Undisputed. The Forest Users note, however, that the content of these letters
2 likely would have been different had the Service coordinated its actions with Butte and Plumas
3 Counties. *See* PLU-A-000319-320 (Butte County Appeal); PLU-E-000035-36 (Plumas County
4 Comment).

5 38. In August 2010, the Plumas National Forest issued its Final Environmental Impact
6 Statement (“FEIS”). PLU-B-000039. The FEIS included responses to comments that the Forest
7 Service had received on the DEIS. *Id.*

8 **RESPONSE:** Disputed to the extent that the statement alleges that the responses to
9 comments were legally adequate. *See* Resp. ¶ 32.

10 39. Chapter 2 of the FEIS describes and compares the alternatives considered.
11 PLU-B-000062-87. The Forest Service considered in detail four action alternatives and a no action
12 alternative. PLU-B-000062. The no-action alternative maintains the status quo and provides a
13 baseline for comparing the other alternatives. PLU-B-000067.

14 **RESPONSE:** Undisputed.

15 40. The Forest Service also considered eleven alternatives but eliminated these from
16 detailed study. PLU-B-000081-85. These eleven alternatives proposed to: designate all
17 inventoried routes as motorized trails; designate more trails; designate all inventoried routes and
18 decommission and restore at a later date; designate all unpaved ML-3 and ML-4 roads for mixed
19 use; designate and manage areas for dispersed camping; designate more motorized play areas;
20 allow cross-country travel to firewood trees; provide a balanced recreation experience for all
21 vehicle types; base seasonal closure on rainfall rather than dates; designate fewer trails based on
22 water and soil; and reduce road density based on comprehensive travel analysis and seasonal wet
23 weather closures of roads. *Id.*

24 **RESPONSE:** Undisputed.

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41. Table 3 in Chapter 2 of the FEIS is a Summary Comparison of Alternatives:

Item	Alt. 1	Alt. 2	Alt. 3	Alt. 4	Alt. 5	
Cross-country travel	Continues	Prohibited	Prohibited	Prohibited	Prohibited	
Changes to Vehicle Class from Highway Legal Only to Mixed Use (Both Highway-Legal and Non-Highway Legal Allowed)	0 miles	0 miles	0 miles	4.1 miles	4.1 miles	
Motorized Trails & Areas Added To National Forest System	Trails Added Open to All Vehicles	0 miles	216.07 miles	0 miles	108.14 miles	156.35 miles
	Trails Added Open to OHV Use Vehicles 50" or Less	0 miles	62.81 miles	0 miles	22.42 miles	38.71 miles
	Trails Added Open to Motorcycles	0 miles	82.46 miles	0 miles	9.65 miles	39.04 miles
	Total	0 miles	361.34 miles	0 miles	140.21 miles	234.10 miles
	Areas Added Open to OHV Use Vehicles 50" or Less	None	Sly Creek area 36 acres	None	None	None

PLU-B-000086.

RESPONSE: Undisputed.

42. The Forest analyzed the physical, biological, social, and economic environments that would be affected by the proposed action and alternatives in chapter 3 of the FEIS. PLU-B-000088. For each alternative, the FEIS discussed the direct, indirect, and cumulative effects on the environment from implementation at the site-specific and Forest-wide scales. *Id.* The Forest

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1 recognized that unmanaged OHV use has resulted in unplanned roads and trails, erosion, watershed
 2 and habitat degradation, and impacts to cultural resource sites. PLU-B-000090. On some Plumas
 3 NFS lands, long managed as open to cross-country motor vehicle travel, repeated use has resulted
 4 in unplanned, unauthorized roads and trails. *Id.* These routes generally developed without
 5 environmental analysis or public involvement, and do not have the same status as NFTS roads and
 6 trails included in the Forest transportation system. *Id.*

7 **RESPONSE:** Disputed. The Service did not adequately analyze the Project's direct or
 8 cumulative effects. *See* PLU-A-000151-153, 000158-164, 000166-173 (SAC/CORVA Appeal);
 9 PLU-A-000320-322 (Butte County Appeal). Motorized vehicle use can be managed in a way that
 10 avoids environmental harm, yet the Service has no evidence that existing access on the Plumas
 11 National Forest caused systematic environmental harm. *See* PLU-D-007149-7150 (SAC
 12 Comment). The majority of the Plumas National Forest's non-system routes were in fact planned,
 13 as they were built for logging, fire access, and other land management. PLU-D-007131 (SAC
 14 Comment).

15 43. Appendix A of the FEIS lists each route proposed for addition to the NFTS and
 16 identifies the alternative(s) under which the route is proposed, the type of vehicle(s) allowed, and
 17 the season when the route would be open. In addition, Appendix A identifies any resource
 18 concerns and necessary maintenance and mitigation measures. PLU-B-000090, -494-524.

19 **RESPONSE:** Disputed to the extent that the statement alleges that Appendix A accurately
 20 portrays the resource concerns, or necessary mitigation, for any given route. *See* PLU-A-000160-
 21 164, 000174-181 (SAC/CORVA Appeal). Appendix A contains no information with respect to
 22 the approximately 700 miles of routes that did not survive the Service's "first cut" paper analysis.

23 44. On August 30, 2010, the Forest Supervisor for the Plumas National Forest signed
 24 the Record of Decision ("ROD") for the Plumas National Forest Motorized Travel Management
 25 Project. PLU-B-0000028.

26 **RESPONSE:** Undisputed. The Forest Users note that the Service could have coordinated
 27 with Butte and Plumas Counties during this process but chose not to. *See* PLU-A-000319-320
 28 (Butte County Appeal); PLU-A-000313-314 (Plumas County Appeal).

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1 45. The FEIS and ROD were made available to the public. PLU-B-000001, 002, 009.

2 **RESPONSE:** Undisputed.

3 46. The ROD selected Alternative 5 as presented in the FEIS and shown on the map
4 included with the ROD, with two minor modifications. PLU-B-000014-16. The ROD prohibits
5 cross-country motorized travel and motor vehicle travel off designated NFTS roads and trails, and
6 areas by the public, except as allowed by permit or other authorization.

7 **RESPONSE:** Disputed to the extent that the statement suggests that no significant changes
8 occurred between the draft and final environmental impacts statements. *See* Pls.' Mem. Summ.
9 J. at 28-29; Pls.' Resp. & Reply at 11-13.

10 47. The ROD increases the motorized trail network from 130 miles to 364 miles of
11 NFTS motorized trails, a 234 mile increase. PLU-B-000017-18. Of the 234 miles, 156 miles are
12 suitable for all vehicles, 39 miles are suitable for vehicles up to 50 inches wide, and 39 miles are
13 suitable for motorcycles only. PLU-B-000016.

14 **RESPONSE:** Undisputed. The Forest Users note that, contrary to the impression created
15 by the ROD's recitation, the net effect of the Service's project was to *decrease* access to the forest.
16 *E.g.*, PLU-A-000160 (SAC/CORVA Appeal); PLU-A-000320-321 (Butte County Appeal).

17 48. The ROD incorporates changes to the vehicle class on Slate Creek Road (NFS
18 24N28 road, 4.1 miles) to allow both highway and non-highway legal vehicles (mixed use) to use
19 this maintenance level 3 (ML-3) road. PLU-B-000016.

20 **RESPONSE:** Undisputed.

21 49. The two minor modifications between the FEIS and the ROD are (1) the removal
22 of approximately 600 feet at the end of Trail 8M11 based on asbestos results and (2) the removal
23 of trails in California red-legged frog critical aquatic refuge areas. PLU-B-000014-15. The Sly
24 Creek open area (located in the Pinkard critical aquatic refuge) was also dropped. PLU-B-000015.
25 Eliminating trails in these aquatic refuge areas reduces potential effect to California red-legged
26 frogs and complies with the programmatic agreement between the Forest Service, Region 5 Pacific
27 Southwest and the U.S. Fish and Wildlife Service for threatened and endangered species. *Id.*

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1 **RESPONSE:** Disputed to the extent that the statement alleges that the Service’s actions
 2 were compelled by the Endangered Species Act. The Act’s consultation provisions do not give
 3 the Fish and Wildlife Service veto power over the Forest Service’s decision-making. *See City of*
 4 *Tacoma v. FERC*, 460 F.3d 53, 76 (D.C. Cir. 2006) (“[T]he ultimate responsibility for compliance
 5 with the [Endangered Species Act] falls on the action agency.”); 50 C.F.R. § 402.15(a) (“[T]he
 6 Federal agency shall determine whether and in what manner to proceed with the action”).
 7 Disputed also to the extent that the statement alleges that the potential effects were to actual frog
 8 habitat. Many miles of routes were dropped owing to the effects to *potential* frog habitat. PLU-A-
 9 000180 (SAC/CORVA Appeal); PLU-A-000321 (Butte County Appeal).

10 50. The ROD also includes mitigation measures for motorized trails with resource
 11 concerns, allowing such trails to be added to the NFTS with negligible environmental impacts and
 12 in compliance with law, regulation, and policy. PLU-B-000016. These trails would be added to
 13 the NFTS, but not placed on the Motorized Vehicle Use Maps (“MVUM”) as open to the public
 14 until the mitigation is completed. PLU-B-000015. Opening trails that require mitigation is
 15 contingent on receiving adequate funds and/or volunteer labor to complete the work.
 16 PLU-B-000016.

17 **RESPONSE:** Disputed to the extent that the ROD accurately portrays the resource
 18 concerns, or necessary mitigation, for any given route. *See* PLU-A-000160-164, 000174-181
 19 (SAC/CORVA Appeal). Many routes contained in the ROD’s Table 2—those routes that would
 20 be designated once appropriate mitigation were identified, PLU-B-000035—still have not been
 21 added to the National Forest Transportation System.

22 51. The Forest Service recognized that eliminating cross-country travel from designated
 23 routes would reduce the availability of acreage for motorized vehicle use as well as motorized
 24 vehicle access to dispersed recreation activities. PLU-B-000017. However, the addition of
 25 previously unauthorized roads and trails to the NFTS will improve the quality of motorized
 26 recreation opportunities by ensuring that these roads and trails receive adequate maintenance and
 27 recreation management practices (such as signage, design features, law enforcement, educational

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1 materials, etc.) that are not otherwise available for unauthorized roads and trails. This will ensure
2 the long term sustainability of these recreational resources. *Id.*

3 **RESPONSE:** Disputed to the extent that the Project’s limited additions to the National
4 Forest Transportation System adequately compensate for the significant negative impacts to
5 recreation and other types of access caused by the Project’s closure of hundreds of miles of non-
6 system routes. *See* PLU-A-000151-153, 000158-159, 000167-175, 000178-179 (SAC/CORVA
7 Appeal); PLU-A-000320-322 (Butte County Appeal); PLU-A-000314-315 (Plumas County
8 Appeal).

9 52. The ROD also included implementation of mitigation measures designed to
10 minimize, reduce, or eliminate impacts on sensitive natural and cultural resources for motorized
11 routes added to the NFTS. PLU-B-000004, 018-021, 035-038.

12 **RESPONSE:** Disputed to the extent that the statement alleges that these mitigation
13 measures were necessary. PLU-A-000160-164 (SAC/CORVA Appeal); PLU-A-000321 (Butte
14 County Appeal); PLU-A-000315 (Plumas County Appeal).

15 53. The alternative selected in the ROD provides access to over 110 dispersed
16 recreation sites across the Forest. PLU-B-000097. Approximately 83 percent of the Plumas
17 National Forest will be within ½ mile of an authorized road or trail once the Plumas Motorized
18 Travel Management Project is fully implemented. PLU-B-000095 (Table 6). As the ROD further
19 explains, the Plumas National Forest already contains an extensive network of existing roads and
20 motorized trails. At the same time, the ROD removes duplicative routes and results in a more
21 manageable system that better protects forest resources. *Id.*

22 **RESPONSE:** Disputed to the extent that mere geographic closeness is a good indicator
23 of access or the quality of the recreational experience. *See* PLU-A-000152 (SAC/CORVA Appeal)
24 (“While able bodied people may travel by foot, horse or bicycle in non-designated areas, the
25 disabled, handicapped and elderly will have no way to access points of interest within the Forest
26 including [dispersed] camping . . .”). The Project’s mass route closure was not the only
27 manageable system. *See* PLU-D-007134-7135 (SAC Comment) (recommending the designation
28 of all routes except those with “egregious damage,” and the development of a comprehensive plan

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1 | for resource damage mitigation and decommissioning on an annual basis). The Service never has
2 | provided the public a map to these 110 “dispersed recreation sites.”

3 | 54. The decision resulted in only a minor reduction in road and trail density, from an
4 | average of 2.44 miles per square mile to 2.09 miles per square mile. PLU-B-000017.

5 | **RESPONSE:** Disputed to the extent that road density is a good indicator of the quality of
6 | motorized vehicle access. *See* PLU-E-000014-16 (Plumas County Comment) (discussing among
7 | other things the importance of spurs and fire and emergency access routes). *See also* Resp. ¶ 53.
8 | Generally, road and trail density are used to measure impacts to soil and water quality, not to the
9 | quantity or quality of motorized vehicle access. *See* PLU-B-000017.

10 | 55. The 2013 Plumas National Forest MVUMs are available at PLU-J-00002-07. These
11 | maps show the NFS roads, trails, and areas that are designated for motor vehicle use pursuant to
12 | 36 C.F.R. § 212.51. The MVUMs also identify the vehicle classes allowed on each route and in
13 | each area, and any seasonal restrictions that apply on those routes and in those areas.

14 | **RESPONSE:** Undisputed.

15 | 56. The ROD does not preclude consideration of additional trails and trail networks in
16 | the future. The Forest is committed to continuing to refine the transportation system in the future
17 | and provide for recreation areas while meeting Agency needs. PLU-B-000018-19; *see e.g.*,
18 | PLU-B-001168-69 (noting that trails may be added in the future), -1178 (“nothing in this decision
19 | prohibits future consideration of status changes to system roads.”), -1218 (“[f]uture analysis may
20 | identify additional roads for Mixed Use Designation); PLU-J-000008, -10 (letters between Butte
21 | County Board of Supervisors and Deputy Forest Supervisors discussing meetings and possibility
22 | of mixed use on specific routes).

23 | **RESPONSE:** Disputed to the extent that the Service’s post-Project consideration cures the
24 | errors in the agency’s original decision-making. *See, e.g.*, PLU-A-000314 (Plumas County
25 | Appeal) (noting that the Service’s promise that it will use county roads as connectors when
26 | considering future additions to the system does not address the transportation conflicts created by
27 | the already closed routes). Many routes contained within the ROD’s Table 2—those routes that

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1 | would be designated once appropriate mitigation were identified, PLU-B-000035—still have not
2 | been added to the National Forest Transportation System.

3 | 57. The Forest Service provided an administrative appeal period for the ROD and FEIS.
4 | Nine individual appeals and associated attachments were received, and a reviewing official
5 | addressed all nine appeals and their associated points in a written decision. PLU-A-000001, -04,
6 | -07, -10, -13, -16, -19, -22, -25, -28, -142-566.

7 | **RESPONSE:** Disputed to the extent that the statement alleges that the reviewing official’s
8 | decision was correct. *See* Pls.’ Summ. J. Mem. at 11-30; Pls.’ Resp. & Reply.

9 | 58. Two of the appellants, Plumas County and Butte County, alleged on appeal that the
10 | Forest failed to coordinate with local governments. In addition to responding in writing to this
11 | appeal, the Forest Service met with Plumas County representatives on at least two occasions and
12 | met with Butte County officials in January 2011. PLU-A-000063, -121-23, -129-30, -134-35.

13 | **RESPONSE:** Disputed. SAC and CORVA also raised the coordination issue in their
14 | administrative appeal. PLU-A-000147-151. The Service’s post-Project interactions with county
15 | officials do not, as a matter of fact, satisfy the agency’s obligations under NEPA and the Travel
16 | Management Rule. *Cf.* PLU-A-000319-322 (Butte County Appeal). Neither do they satisfy those
17 | obligations as a matter of law. *See Sierra Club v. Bosworth*, 510 F.3d 1016, 1026 (9th Cir. 2007)
18 | (“Post-hoc examination of data to support a pre-determined conclusion is not permissible because
19 | ‘[t]his would frustrate the fundamental purpose of NEPA’” (quoting *California v. Norton*, 311
20 | F.3d 1162, 1175 (9th Cir. 2002))).

21 | 59. The Forest Service responded that the issues raised by the counties on appeal were
22 | the same as those raised as comments on the DEIS and had been considered. *See* PLU-A-
23 | 000010-15. When Plumas County raised this claim of a failure to coordinate on appeal, the Forest
24 | Service referred to a list of meetings held with Plumas County during the planning process as well
25 | as mailing lists showing the contacts made to the county. PLU-A-000078; PLU-E-000058.
26 | Similarly, the Forest Service responded to the appeal from Butte County with specific references
27 | to earlier attempts to address those concerns. PLU-A-000083.

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1 **RESPONSE:** Undisputed as to the general characterization of the content of the Forest
2 Service’s response to the Counties’ appeals. Disputed to the extent that the statement alleges that
3 the Service’s interactions with County officials satisfied the agency’s coordination obligation. *See*
4 *Resp.* ¶ 58.

5 60. An examination of the first cut spreadsheets shows that the Forest Service
6 considered input from the public on dead-end spurs. To provide one example, the draft
7 Beckwourth Inventory notes that Plaintiff Sierra Access Coalition proposed trail number 6936 for
8 inclusion and identifies the trail as a “dead end spur” with a medium level of benefits and a
9 medium level of concerns and risks. PLU-G-001245. The final Beckwourth Inventory provides
10 this same information and identifies trail number 6936 as Trail 13M21A. PLUG-001239. Table 1
11 in the FEIS, which identifies trails proposed for inclusion to the NFTS, then lists Trail 13M21A
12 under Alternative Two. PLU-B-000077.

13 **RESPONSE:** Undisputed that the cited route was considered as described. Disputed to
14 the extent that the statement alleges that this consideration absolved the Service from its duty to
15 analyze the many other hundreds of miles of routes that did not survive the “first cut” analysis.
16 *See* PLU-A-000160-164 (SAC/CORVA Appeal); PLU-A-000314 (Plumas County Appeal).

17 61. PLU-D-012341 is a route designation form submitted by a member of the public
18 requesting inclusion of route number 7209. Route 7209 (inventory number in the spreadsheet) is
19 listed in the spreadsheet associated with the time frame when route designation forms were
20 submitted (in 2007) at PLU-D-012280. This route is carried forward in the latest version of the
21 spreadsheet at PLU-G-001238. This latest version of the spreadsheet adds a “trail number,” which
22 is 12M12. *Id.*; PLU-B-0000076, 119, 516. Trail 12M12 is also listed in the ROD in table 2
23 requiring mitigation before being added to the NFTS at PLU-B-000037.

24 **RESPONSE:** Undisputed that the cited route was considered as described. Disputed to
25 the extent that the statement alleges that this consideration absolved the Service from its duty to
26 analyze the many other hundreds of miles of routes that did not survive the “first cut” analysis.
27 *See* PLU-A-000160-164 (SAC/CORVA Appeal); PLU-A-000314 (Plumas County Appeal).

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1 62. PLU-D-012370 is a route designation form submitted by Sierra Access Coalition
2 (“SAC”) requesting inclusion of route number 7252. Route 7252 is listed in the old spreadsheet
3 at PLU-D-012279. This route is carried forward in the latest spreadsheet at PLU-G-001239 and
4 is assigned trail number 13M10B. This trail number is found in the FEIS in Alternative 2 at
5 PLU-B-000077, 518. This route was not included in Alternative 5, the selected alternative, and
6 therefore this route is not included in the ROD.

7 **RESPONSE:** Undisputed that the cited route was considered as described. Disputed to
8 the extent that the statement alleges that this consideration absolved the Service from its duty to
9 analyze the many other hundreds of miles of routes that did not survive the “first cut” analysis.
10 *See* PLU-A-000160-164 (SAC/CORVA Appeal); PLU-A-000314 (Plumas County Appeal).

11 63. PLU-D-012449 is a route designation form submitted by SAC requesting inclusion
12 of route number 6048. Route 6048 is in the old spreadsheet at PLU-D-012271. This route is
13 carried forward in the latest spreadsheet at PLU-G-001238 and is assigned trail number 10M12.
14 This trail number is found in the FEIS at PLU-B-000074, 431, 510. Trail 10M12 is also listed in
15 the ROD in table 1 and was added to the NFTS at PLU-B-000032.

16 **RESPONSE:** Undisputed that the cited route was considered as described. Disputed to
17 the extent that the statement alleges that this consideration absolved the Service from its duty to
18 analyze the many other hundreds of miles of routes that did not survive the “first cut” analysis.
19 *See* PLU-A-000160-164 (SAC/CORVA Appeal); PLU-A-000314 (Plumas County Appeal).

20 DATED: June 9, 2016.

21 Respectfully submitted,

22 M. REED HOPPER
23 DAMIEN M. SCHIFF

24 By /s/ Damien M. Schiff
25 DAMIEN M. SCHIFF

26 Attorneys for Plaintiffs
27
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CERTIFICATE OF SERVICE

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I hereby certify that on June 9, 2016, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Eastern District of California through the Court's CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the Court's CM/ECF system.

/s/ Damien M. Schiff
DAMIEN M. SCHIFF

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930 G Street
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Barbara A. Siebert

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The following transaction was entered by Schiff, Damien on 6/9/2016 at 11:23 AM PDT and filed on 6/9/2016

Case Name: (TEMP) Granat et al v. United States Department of Agriculture et al

Case Number: [2:15-cv-00605-MCE-EFB](#)

Filer: California Off-Road Vehicle Association
County of Butte
County of Plumas
Amy Granat
Corky Lazzarino
Sierra Access Coalition

Document Number: [38](#)

Docket Text:

OPPOSITION by California Off-Road Vehicle Association, County of Butte, County of Plumas, Amy Granat, Corky Lazzarino, Sierra Access Coalition to [37] Cross-Motion for Summary Judgment. (Attachments: # (1) Response to Federal Defendants' Statement of Undisputed Facts)(Schiff, Damien)

2:15-cv-00605-MCE-EFB Notice has been electronically mailed to:

Damien Michael Schiff dms@pacificlegal.org, incominglit@pacificlegal.org, tae@pacificlegal.org

Davene Dashawn Walker davene.walker@usdoj.gov, efile_nrs.enrd@usdoj.gov

John Tustin , GOVT john.tustin@usdoj.gov, efile_nrs.enrd@usdoj.gov

Lynn Trinka Ernce lynn.trinka.ernce@usdoj.gov, caseview.ecf@usdoj.gov, Janet.Bain@usdoj.gov,
monica.lee@usdoj.gov, usacae.ecfsaccv@usdoj.gov

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2364ec451288217af582645c13c64f43564c0fd6229b591612d786c0432b]]

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